

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE REQUIREMENT THAT IN A PROCEEDING TO DETERMINE THE EXISTENCE OF THE FATHER AND CHILD RELATIONSHIP, THE COURT SHALL APPOINT COUNSEL FOR A PARTY WHO IS FINANCIALLY UNABLE TO OBTAIN COUNSEL; AND AMENDING SECTIONS 40-5-236 AND 40-6-119, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results, specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The

1 court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an
2 appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary
3 party, but either may testify as a witness.

4 (5) No other matter may be joined with an action to determine the existence or nonexistence of the
5 parent and child relationship under this section. The parties shall institute an independent action to address other
6 issues, including visitation and custody.

7 (6) Except as provided in 25-10-711, the department is not liable for attorney fees, ~~including fees for~~
8 ~~attorneys appointed under 40-6-119,~~ or fees of a guardian ad litem appointed under 40-6-110."

9
10 **Section 2.** Section 40-6-119, MCA, is amended to read:

11 **"40-6-119. Right to appear by or with counsel -- payment of counsel fees and costs -- free**
12 **transcript on appeal.** (1) At the pretrial hearing and in further proceedings, any party may be represented by
13 counsel. ~~The court shall appoint counsel for a party who is financially unable to obtain counsel.~~

14 (2) The court may order reasonable fees of counsel, experts, and the child's guardian ad litem and other
15 costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions
16 and at times determined by the court.

17 (3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a
18 transcript for purposes of appeal."

19 - END -